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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Twelfth periodic report of States parties due in 1994

Addendum

MALTA*

[6 December 1995]

I. GENERAL

1. Since the submission of Malta's eighth and ninth periodic reports in 1989, there have been no new cases or allegations of discrimination on the ground of race, colour or ethnic origin, whether in the courts or in the public media. No cases regarding discriminatory practice have been put forward in any international forum, including the Committee on the Elimination of Racial Discrimination.

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* The tenth, eleventh and twelfth periodic reports of Malta, due on 26 June 1990, 1992 and 1994 respectively, are combined in this document.

For the eighth and ninth periodic reports of Malta and the summary records of the meetings at which the Committee considered the reports, see document CERD/C/171/Add.2 and CERD/C/SR.897.

The annexes may be consulted in the files of the Centre for Human Rights.

2. The State of Malta has had no incident that could imply any sort of undertaking in any act or practice of racial discrimination against persons, groups of persons or institutions. All public authorities and public institutions act in conformity with this obligation. The education system, the judicial system, the mass media network, the social system, the complex system of intercultural communication between Maltese nationals and foreigners reflect this excellent promotion of understanding among all races.

3. Malta has never had a Constitutional Court case challenging any law or administrative action based on racial prejudice or discrimination.

4. Previous reports have already indicated the possibilities of redress for a person acting on his or another's behalf. These possibilities still exist and, apart from redress before the European Court of Human Rights, individuals and groups now have the possibility of recourse to the Human Rights Committee after Malta ratified the International Covenant on Civil and Political Rights in 1990, as well as its Optional Protocols.

5. Legislation on the matter has already been described and as yet no new Acts have been published. The diverging opinions of the Committee and the Maltese Government have already been aired and it would be useless to repeat them. However, it is important to state again the position of Malta which has led to its making the reservations it did, particularly in regard to the question of penalization of racial offences. It has been stated that no social system could guarantee the absence of racial discrimination. Malta agrees with this statement, but it can apply only where there exists significant ethnic diversity within a society. Thus, as can be seen by the demographic data provided with this report, there exists no such significant ethnic minority which can warrant any fears as to the safeguarding of their rights. It is for this reason that the Maltese Government does not feel the need to enact new ad hoc legislation. It is felt that there exist sufficient legal guarantees for a social life which excludes racial discrimination.

6. There exist other indicators of the existence or absence of racial discrimination in Malta. Maltese citizens who form the overwhelming majority of the population, are traditionally known for their acceptance of difficult cultures and ideologies. This does not automatically mean that all Maltese are persons who cannot be prejudiced. After all, everyone is entitled to his opinions. There does not exist, however, any concerted action or programme which is intended to promote racial hatred or divisions. This fact may be ascertained in individuals or groups, as well as in any of the governmental and non-governmental agencies and institutions which exist in Malta. In this light, if any case of such concerted action were to arise, the provisions of the Seditious Propaganda (Prohibition) Ordinance, which has already been described in paragraph 7 of the previous report, may be deemed to be enough to prosecute those offenders concerned. No prosecution of persons under this provision has been made since the last report.

II. INFORMATION IN RELATION TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

7. The position has remained the same as that described in the last report. Since Malta has ratified the International Covenant on Civil and Political Rights, individuals and groups, besides the possibility of recourse to the constitutional courts and the European Court of Human Rights, may also apply to the Human Rights Committee for redress. This may be done, however, provided that a petition has not been sent simultaneously to the European Court and the Committee, in the light of the government reservation entered upon the ratification of the Optional Protocol to the Covenant. Moreover, the Maltese Government has been actively studying the possibility of enacting new ad hoc legislation to cover all those forms of discrimination which might arise in the future. The Government is also actively considering the implementation of article 14 of the Covenant and the enactment of certain laws that could satisfy the requirements of article 4.

Article 3

8. Malta has consistently continued to condemn racial discrimination and particularly the practice of apartheid. Following the adoption of Security Council resolution 919 (1994) of 25 May 1994 and the establishment in South Africa of a non-racial and democratic Government, Malta has established diplomatic relations with South Africa. In the meantime, Malta has welcomed, both at the United Nations and within the Commonwealth, South Africa's return to the community of nations.

Article 4

9. The legislative position is the same as indicated in the previous report. As stated earlier, the Government of Malta, feels that there is no immediate need to use such direct measures, in the light of the present situation in Malta. However, there are plans in the near future to enact specific legislation. In this way, there will be a stronger legal position for the competent Maltese authorities to cope with any future possible incidents. As already indicated above, the Government is actively considering the required declaration under article 14 and at the same time is studying how to create the required framework within the terms envisaged in article 4. Furthermore, the Government of Malta has set up the Office of the Ombudsman with the function to investigate administrative actions taken by or on behalf of government departments, local councils and other public authorities. The Ombudsman has extensive powers to implement mandates approved by law. The Ombudsman will ensure the protection of the individual against any abuse and will see that the administration is just and fair in its decision. This will continue to upgrade and strengthen protection of democracy and further promote freedom and justice in an effective and efficient manner. A copy of Act No. XXI of 1995 is annexed to this report.

10. There have been other measures, however, which have been taken by the Government in this regard since the last report. Various campaigns against the negative effect of racial discrimination have been undertaken in the media to mobilize public opinion. It is important to stress the fact that racial

discrimination as an organized and consistent policy is widely unaccepted in Maltese society. The question as put has a rhetorical effect, especially the expression "without exception"; the Government, through educational, cultural and similar channels is enhancing the legal awareness of each and every person living in Malta, thus enhancing the awareness that it is important for each member of the public to be aware that he is entitled to go to court if he considers himself to have been, or is liable to become a victim of racial discrimination.

Article 5

11. Article 32 of the Constitution reads as follows:

"Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely

"(a) life, security of the person, the enjoyment of property and the protection of the law;

"(b) freedom of conscience, of expression and of peaceful assembly and association; and

"(c) respect for his private and family life, the subsequent provisions of this chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

This provision implies that everyone in Malta has his rights protected, irrespective of his beliefs and racial identity.

12. Life, security of the person, enjoyment of properties, protection of law, freedom of conscience, of expression and of peaceful assembly and association, and respect for his private and family life are guaranteed by the Constitution which specifically declares that every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex (art. 32 of the Constitution).

13. It is important to note that all articles regulating the protection of the individual's fundamental rights and freedoms are not based on citizenship or nationality but are based precisely on the concept of the person (arts. 33-43). Thus, the provisions covering protection of the law, as provided in article 39, are valid and enforceable by any person whatsoever. The only exception to this rule is article 44 regulating the mode of protection of the freedom of movement. Article 44 in fact formally gives this protection specifically to citizens of Malta. "No citizen of Malta shall be

deprived of his freedom of movement". However, subsection 5 of article 44 gives the right of review to any person whose freedom of movement has been restricted.

14. Article 45 states that no law shall make any provision that is discriminatory either of itself or in its effect. This affords ample legal protection from discrimination on the ground of race. It states that no person shall be treated in a discriminating manner by any person acting by virtue of any written law or in the performances of the functions of any public office or any public authority. "Discriminatory" is itself defined by the Constitution as "affording different treatment to different persons attributable wholly or mainly to their respective description by race, place of origin ... whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description".

15. The enforcement of the above-mentioned protection provisions is regulated by article 46. The Civil Court, First Hall, has original jurisdiction to hear and determine any application made by a person who alleges that any of the provisions of sections 33 to 45 (inclusive) has been, is being or is likely to be contravened in relation to him (sect. 46).

16. The Constitutional Court has jurisdiction to hear and determine appeals from the decisions of the Civil Court, First Hall, under section 4 of the Constitution.

Article 6

17. See parts I and II, particularly under articles 3 and 4.

Article 7

18. There is a constitutional protection afforded to all individuals in Malta against racial discrimination. The traditional Maltese acceptance of racially different individuals is present in all aspects of life. This is to be seen in the fields of teaching, education, culture and information. All of these aspects of social life are run by principles which, *inter alia*, act to prevent prejudices, help to foster tolerance and friendship among nations as well as racial groups, in line with the general principles of the Charter of the United Nations and the International Convention on the Elimination of All Forms of Racial Discrimination. As described in the previous report, there exists a comprehensive inclusion of topics destined to increase awareness in the student of anti-racist values. Foreign students have increased since the last report and few have complained of their stay, and those who did complain did not do so on account of any racist attitudes.

19. The official number of refugees in Malta as of 7 September 1995 is 680 (463 adults and 217 children). This amount includes refugees recognized by UNHCR; refugees whose case is at the stage of appeal; refugees whose case is still being examined; persons whom UNHCR have recommended to have temporary protection; persons who cannot return or be sent back to their country.

20. The refugees are divided as follows: 120 Europeans (115 from ex-Yugoslavia, 5 from Chechnya) and 500 from elsewhere (Iraq 422; Somalia 23; Palestine 35; Algeria 28; Syrian Arab Republic 23; Lebanon 8; others 21).

21. The number of recognized non-European refugees or persons regarded as of concern to UNHCR is 229 (164 adults, 65 children). This is broken down as follows: Iraq 185 (132 adults, 53 children), Palestine 18 (14 adults, 4 children), Somalia 13 (5 adults, 8 children), Algeria 3, Liberia 1, Burundi 1, Syrian Arab Republic 1, Tunisia 1, Egypt 2, Sudan 1.

22. The demographic composition of Malta may be analysed from the latest available demographic review published by the Central Office of Statistics of Malta. A copy of this latest Demographic Review of the Maltese Islands (1993) is annexed to this report). Also annexed to this report is a copy of the Maltese Government Gazette which includes foreign nationals holding employment licences as at November 1995.

23. With regard to the request made by the Committee that Malta submits a copy of the report on constitutional reform, the Government wishes to inform the Committee that discussions on this matter are still going on. As such no report has yet been published. However, it is the intention of the Government of Malta to submit this report as soon as the ongoing discussions are terminated and the proposals are approved by Parliament.